

**FILED**

JAN 18 2011

Board of Vocational Nursing  
and Psychiatric Technicians

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8  
9 **BEFORE THE**  
**BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. VN-2008-1567

13 **DONNA LEE HUBER**  
14 **322 S. Imperial Avenue**  
**Brawley, CA 92227**

**A C C U S A T I O N**

15 **Vocational Nurse License No. VN 231239**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in  
21 her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric  
22 Technicians, Department of Consumer Affairs.

23 2. On or about December 10, 2007, the Board of Vocational Nursing and Psychiatric  
24 Technicians issued Vocational Nurse License Number VN 231239 to Donna Lee Huber  
25 (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to  
26 the charges brought herein and will expire on April 30, 2011, unless renewed.

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1           7.     Section 493 of the Code states:

2                 Notwithstanding any other provision of law, in a proceeding conducted by a  
3                 board within the department pursuant to law to deny an application for a license or to  
4                 suspend or revoke a license or otherwise take disciplinary action against a person who  
5                 holds a license, upon the ground that the applicant or the licensee has been convicted  
6                 of a crime substantially related to the qualifications, functions, and duties of the  
7                 licensee in question, the record of conviction of the crime shall be conclusive  
8                 evidence of the fact that the conviction occurred, but only of that fact, and the board  
9                 may inquire into the circumstances surrounding the commission of the crime in order  
10                to fix the degree of discipline or to determine if the conviction is substantially related  
11                to the qualifications, functions, and duties of the licensee in question.

12                As used in this section, "license" includes "certificate," "permit," "authority,"  
13                and "registration."

14           8.     Section 2878 of the Code states:

15                 The Board may suspend or revoke a license issued under this chapter [the  
16                 Vocational Nursing Practice Act (Bus. & Prof. Code, § 2840, et seq.)] for any of the  
17                 following:

18                (a) Unprofessional conduct, which includes, but is not limited to, the  
19                following:

20                         . . . .

21                (f) Conviction of a crime substantially related to the qualifications, functions,  
22                and duties of a licensed vocational nurse, in which event the record of the conviction  
23                shall be conclusive evidence of the conviction.

24                         . . . .

25           9.     Section 2878.5 of the Code states:

26                 In addition to other acts constituting unprofessional conduct within the meaning  
27                 of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for  
28                 a person licensed under this chapter to do any of the following:

                       . . . .

(b) Use any controlled substance as defined in Division 10 of the Health and  
Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic  
beverages, to an extent or in a manner dangerous or injurious to himself or herself,  
any other person, or the public, or to the extent that the use impairs his or her ability  
to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving possession of any narcotic or  
dangerous drug, or the prescription, consumption, or self-administration of any of the  
substances described in subdivisions (a) and (b) of this section, in which event the  
record of the conviction is conclusive evidence thereof.

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1 (d) Be committed or confined by a court of competent jurisdiction for  
2 intemperate use of or addiction to the use of any of the substances described in  
3 subdivisions (a) and (b) of this section, in which event the court order of commitment  
4 or confinement is prima facie evidence of that commitment or confinement.

## 5 **REGULATORY PROVISIONS**

6 10. California Code of Regulations, title 16, section 2521, states:

7 For the purposes of denial, suspension, or revocation of a license pursuant to  
8 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
9 crime or act shall be considered to be substantially related to the qualifications,  
10 functions or duties of a licensed vocational nurse if to a substantial degree it  
11 evidences present or potential unfitness of a licensed vocational nurse to perform the  
12 functions authorized by his license in a manner consistent with the public health,  
13 safety, or welfare. Such crimes or acts shall include but not be limited to those  
14 involving the following:

15 (a) Procuring a license by fraud, misrepresentation, or mistake.

16 (b) A conviction of practicing medicine without a license in violation of  
17 Chapter 5 of Division 2 of the Business and Professions Code.

18 (c) Violating or attempting to violate, directly or indirectly, or assisting in or  
19 abetting the violation of, or conspiring to violate any provision or term of Chapter  
20 6.5, Division 2 of the Business and Professions Code.

21 (d) Aiding or assisting, or agreeing to aid or assist any person or persons,  
22 whether a licensed physician or not, in the performance of or arranging for a violation  
23 of any of the provisions of Article 13, Chapter 5, Division 2 of the Business and  
24 Professions Code.

25 (e) Conviction of a crime involving fiscal dishonesty.

26 (f) Any crime or act involving the sale, gift, administration, or furnishing of  
27 "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of the  
28 Business and Professions Code.

11. California Code of Regulations, title 16, section 2522 states:

When considering a) the denial of a license under Section 480 of the Business  
and Professions Code, b) the suspension or revocation of a license on the ground that  
a licensee has been convicted of a crime, or c) a petition for reinstatement of a license  
under Section 2787.7 of the Business and Professions Code, the Board in evaluating  
the rehabilitation of an individual and his or her present eligibility for a license, will  
consider the following criteria:

(1) Nature and severity of the act(s), offense(s), or crime(s) under  
consideration.

(2) Actual or potential harm to the public.

- 1 (3) Actual or potential harm to any patient.
- 2 (4) Overall disciplinary record.
- 3 (5) Overall criminal actions taken by any federal, state or local agency or  
4 court.
- 5 (6) Prior warnings on record or prior remediation.
- 6 (7) Number and/or variety of current violations.
- 7 (8) Mitigation evidence.
- 8 (9) In case of a criminal conviction, compliance with terms of sentence  
and/or court-ordered probation.
- 9 (10) Time passed since the act(s) or offense(s) occurred.
- 10 (11) If applicable, evidence of proceedings to dismiss a conviction pursuant  
11 to Penal Code section 1203.4.
- 12 (12) Cooperation with the Board and other law enforcement or regulatory  
agencies.
- 13 (13) Other rehabilitation evidence.

#### 14 **COSTS**

15 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
16 administrative law judge to direct a licentiate found to have committed a violation or violations of  
17 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
18 enforcement of the case.

#### 19 **FIRST CAUSE FOR DISCIPLINE**

##### 20 **(July 6, 2009 Criminal Conviction for DUI on August 31, 2008)**

21 13. Respondent has subjected her license to disciplinary action under sections 490 and  
22 2878, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially  
23 related to the qualifications, functions, and duties of a licensed vocational nurse. The  
24 circumstances are as follows:

25 a. On or about July 6, 2009, in a criminal proceeding entitled *People of the*  
26 *State of California v. Donna Lee Huber*, in Imperial County Superior Court, case number  
27 ECM28002, Respondent was convicted on her plea of guilty of violating Vehicle Code section  
28 23152, subdivision (b), driving with a blood alcohol content (BAC) of 0.08 percent or higher, a

1 misdemeanor. A second count of driving under the influence of alcohol (Veh. Code, § 23152,  
2 subd. (a)) was dismissed pursuant to a plea agreement.

3           b.     As a result of the conviction, on or about July 6, 2009, Respondent was  
4 sentenced to five years summary probation and 120 days in the county jail. Respondent was  
5 given credit for 60 days, and the remaining 60 days were ordered to be served in a residential  
6 treatment program in lieu of jail. Respondent was ordered to pay \$1,589 in fees and fines and  
7 comply with standard terms of DUI probation.

8           c.     The facts that led to the conviction are that on or about the early morning  
9 of August 31, 2008, California Highway Patrol (CHP) officers were on routine patrol in El Centro  
10 when they observed Respondent driving in a suspicious manner. They conducted a traffic stop  
11 and noted that when speaking with Respondent, she had an odor of an alcoholic beverage  
12 emitting from the vehicle and her breath. Respondent's eyes were red and watery and her speech  
13 was raspy and slurred. Respondent admitted to consuming alcohol earlier in the evening.  
14 Respondent agreed to submit to field sobriety tests, but she was unable to perform them as  
15 explained and demonstrated. Based on Respondent's objective symptoms of intoxication and her  
16 performance on the field sobriety tests, she was arrested for driving under the influence of  
17 alcohol. Respondent provided two breath samples in a preliminary alcohol screening test which  
18 registered .21 and .20 percent blood alcohol concentration (BAC).

19                                   **SECOND CAUSE FOR DISCIPLINE**

20                   **(July 6, 2009 Criminal Conviction for DUI on December 12, 2008)**

21           14.   Respondent has subjected her license to disciplinary action under sections 490 and  
22 2878, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially  
23 related to the qualifications, functions, and duties of a licensed vocational nurse. The  
24 circumstances are as follows:

25           a.     On or about July 6, 2009, in a criminal proceeding entitled *People of the*  
26 *State of California v. Donna Lee Huber*, in Imperial County Superior Court, case number  
27 BCM19909, Respondent was convicted on her plea of guilty of violating Vehicle Code section  
28 23152, subdivision (b), driving with a BAC of 0.08 percent or higher, a misdemeanor, and she

1 admitted the allegation that her BAC was .20 percent or more. Count 1, driving under the  
2 influence of alcohol (Veh. Code, § 23152, subd. (a)) and Count 2, driving on a  
3 suspended/revoked license (Veh. Code, § 14601.2, subd. (a)), were dismissed pursuant to a plea  
4 agreement.

5           b. As a result of the conviction, on or about July 6, 2009, Respondent was  
6 sentenced to five years summary probation and 120 days in the county jail. Respondent was  
7 given credit for 60 days, and the remaining 60 days were ordered to be served in a residential  
8 treatment program in lieu of jail. Respondent was ordered to pay \$1,589 in fees and fines and  
9 comply with standard terms of alcohol probation. The sentence was ordered to run concurrent  
10 with the sentence detailed in paragraph 13, above.

11           c. The facts that led to the conviction are that on or about the early morning  
12 of December 12, 2008, an officer from the Brawley Police Department observed a vehicle, driven  
13 by Respondent, stopped in the middle of a traffic lane. The vehicle started moving down the road  
14 and the officer activated his emergency lights and attempted to conduct a stop. Respondent  
15 continued down the road and pulled into an apartment complex and parked. When the officer  
16 asked Respondent why she was stopped in the middle of the road, she stated that she was texting  
17 someone. A check of Respondent's driver's license revealed that it had been suspended as a  
18 result of her prior DUI arrest. The officer immediately smelled the odor of an alcoholic beverage  
19 on Respondent's breath, her eyes were red and watery, and there were three empty beer bottles on  
20 the left rear passenger floorboard. Believing Respondent may be intoxicated, he had her exit her  
21 vehicle; she had to use the vehicle door to maintain her balance. Respondent refused to continue  
22 with the field sobriety tests after failing the walk and turn. Respondent refused to submit to the  
23 preliminary alcohol screen and insisted on a blood test. The officer noted that Respondent  
24 became very angry and uncooperative. She was arrested for driving under the influence of  
25 alcohol and taken to a hospital to provide a blood sample.

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1 THIRD CAUSE FOR DISCIPLINE

2 (July 6, 2009 Criminal Conviction for DUI on February 21, 2009)

3 15. Respondent has subjected her license to disciplinary action under sections 490 and  
4 2878, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially  
5 related to the qualifications, functions, and duties of a licensed vocational nurse. The  
6 circumstances are as follows:

7 a. On or about July 6, 2009, in a criminal proceeding entitled *People of the*  
8 *State of California v. Donna Lee Huber*, in Imperial County Superior Court, case number  
9 ECM29088, Respondent was convicted on her plea of guilty of violating Vehicle Code section  
10 23152, subdivision (b), driving with a BAC of .08 or higher, a misdemeanor.

11 b. As a result of the conviction, on or about July 6, 2009, Respondent was  
12 sentenced to five years summary probation and 120 days in the county jail. Respondent was  
13 given credit for 60 days, and the remaining 60 days were ordered to be served in a residential  
14 treatment program in lieu of jail. Respondent was ordered to pay \$1,589 in fees and fines and  
15 comply with standard terms of DUI probation. The sentence was ordered to run concurrent with  
16 the sentences detailed in paragraphs 13 and 14, above.

17 c. The facts that led to the conviction are that on or about the early morning  
18 of February 21, 2009, officers from the El Centro Police Department conducted a traffic stop on  
19 Respondent when her rear brake light was observed not functioning. Respondent informed the  
20 officers that she had consumed a six-pack of beer earlier in the evening. A check of her driver's  
21 license revealed that it had been suspended. Respondent had a strong odor of an alcoholic  
22 beverage on her breath. Respondent was unable to perform field sobriety tests correctly due to  
23 symptoms of intoxication and recent knee surgery. She provided a breath sample on a  
24 preliminary alcohol screening test which registered .128 percent BAC. Respondent was arrested  
25 for driving under the influence of alcohol. She refused to provide further blood or breath  
26 samples.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Use of Alcohol in a Dangerous Manner)**

3 16. Respondent has subjected her license to disciplinary action under section 2878.5,  
4 subdivision (b) of the Code in that on or about August 31, 2008, December 12, 2008, and  
5 February 21, 2009, Respondent used alcohol in a manner dangerous or injurious to herself and  
6 others, in that she operated a motor vehicle on a public roadway while intoxicated as described in  
7 paragraphs 13-15, above.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct - Criminal Convictions Involving the Consumption of Alcohol)**

10 17. Respondent has subjected her license to disciplinary action under section 2878.5,  
11 subdivision (c) of the Code in that on or about July 6, 2009, Respondent pled guilty to and was  
12 convicted on three separate alcohol-related criminal complaints as described in paragraphs 13-15,  
13 above.

14 **SIXTH CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct – Court-Ordered Commitment for Alcohol Addiction)**

16 18. Respondent has subjected her license to disciplinary action under section 2878.5,  
17 subdivision (d) of the Code in that on or about July 6, 2009, in three separate criminal  
18 proceedings entitled *People of the State of California v. Donna Lee Huber*, Imperial County  
19 Superior Court case numbers ECM28002, BCM19909, and ECM29088, Respondent was ordered  
20 committed to a six-month residential treatment program for alcohol addiction, as detailed in  
21 paragraphs 13-15, above.

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1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
3 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians  
4 issue a decision:

- 5 1. Revoking or suspending Vocational Nurse License Number VN 231239, issued to  
6 Donna Lee Huber;
- 7 2. Ordering Donna Lee Huber to pay the Board of Vocational Nursing and Psychiatric  
8 Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to  
9 Business and Professions Code section 125.3;
- 10 3. Taking such other and further action as deemed necessary and proper.
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12 DATED: January 13, 2011

  
for

TERESA BELLO-JONES, J.D., M.S.N., R.N.  
Executive Officer  
Board of Vocational Nursing and Psychiatric Technicians  
Department of Consumer Affairs  
State of California  
Complainant

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